IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 395 of 2002.

Judgement reserved on: 7.5.2007

Date of decision: 9.5.2007.

Smt. Shakuntla ….. Appellant.

Vs.

Arun Kumar …. Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. M.L.Brakta, Advocate.

For the Respondents : Mr. Suneet Goel, Advocate.

Kuldip Singh, Judge.

The respondent-wife is in appeal against judgement, decree dated 17.8.2002 passed by the learned Sub Judge Ist Class, Kasauli, camp at Kandaghat, in petition No. 1-K/3 of 2000, whereby a decree of restitution of conjugal rights, under Section 9 of the Hindu Marriage Act, 1955, has been passed in favour of the petitioner-husband.

2. The brief facts, as emerged from the petition, are that the marriage, between the parties was performed on 22.9.1996. On 18.6.1997, respondent gave birth to a male child, who is living with his mother. The respondent was looked after properly by the petitioner and family members. After about one month from the birth of the child, the respondent wished to visit her parental house. The

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

petitioner took the respondent to her parents house. The respondent promised to return after about fortnight. When respondent did not return, the petitioner and his father visited the respondent several times to bring her back, but respondent at the instance of her parents refused to return to the matrimonial house, without any reasonable cause. But on great persuasion, in December, 1997, she came to petitioner's house and stayed there till February, 1998, when she again went to her parents house. The petitioner made several efforts to bring her back and the child, but she did not come. The petitioner on 22.7.1998, issued a notice to the respondent and requested her to join his company, but she did not return.

3. Earlier the petitioner filed a petition, under Section 9 of the Act for restitution of conjugal rights, which was compromised on 7.10.1999. The respondent undertook to join the company of the petitioner and withdrawn the maintenance petition filed by her, under Section 125 of the Code of Criminal Procedure. The respondent lived in the house of the petitioner till 12.5.2000 and on that date father of the respondent visited the house of the petitioner and without the consent of the petitioner took the respondent and the child to his house. The petitioner filed proceedings, under Sections 97 and 98 of the Code of Criminal Procedure and took assistance of the police to fetch her back, but she refused to return. She insisted that she would reside with the petitioner only if he keeps her alone and live separately from his parents.

4. The petitioner has ultimately submitted that respondent has left the house of the petitioner without any reasonable cause and

has thus withdrawn from the society of the petitioner. The petitioner has submitted that he is ready to maintain the respondent and child, as per his status and means.

5. The petition has been contested by the respondent. She has taken several preliminary objections. It is her case that petition has been filed as a counter-blast to the petition of respondent, under Section 125 of the Code of Criminal Procedure. The respondent has submitted that petitioner and his family members started maltreating her and gave severe beatings to her on several occasions. She has further stated that even after the compromise, the petitioner and his family members repeated their earlier attitude and maltreated her. She was forced to live with her parents alongwith her child.

6. The court below allowed the petition by the impugned judgement and decree. In this way respondent-wife is in appeal.

7. I have heard the learned counsel for the parties and have also gone through the record.

8. The petitioner has appeared as his own witness as PW 1 and has supported his case generally. PW 2 Mast Ram is the father of the petitioner. He has stated that after one month of the delivery of the child, the respondent went to her parents house. They went to bring her back, but she did not return. He has stated that petitioner never ill-treated her. The respondent is living at her parents house without any just and reasonable cause. He has stated that he alongwith his family members are ready to keep the respondent and her child with them. PW 3 Siri Ram is a close relative of the petitioner. He has deposed that in December, 1997, he alongwith the

petitioner and other persons went to the parents house of the petitioner to bring her back. She in fact came, but again left the house of the petitioner. RW 1 respondent has admitted that the expenses of the hospital were borne by the petitioner. She has stated that even her neighbours had witnessed the beatings given to her. She has stated that she never reported the matter to the police. She has admitted that in 1997, her husband and father- in -law etc. came to take her back. She has not produced any witness in support of her allegation that petitioner used to give her beatings. RW 2 Sahibu Ram is the father of the respondent. He has stated that respondent is living with him. He has further stated that he never enquired from the petitioner why he gave beatings to his daughter. The respondent never told him any reason for beatings.

9. The matrimonial home of the respondent is the house of petitioner and admittedly she is living separately, therefore, as per explanation to Section 9 of the Act, it is for her to establish the reasonable ground for living separately. The petitioner has proved that without any reasonable cause, the respondent has withdrawn from the society of the petitioner. The trial court has rightly appreciated the facts and has passed the impugned decree in favour of the petitioner. No case has been made out by the respondent for interference.

10. In view of above discussion, the appeal is dismissed, the impugned judgement and decree are confirmed. No costs.

May 9, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**